Environmental Audit, one of the conditions for Mining Operations in the Democratic Republic of Congo

I. Introduction

A country's socio-economic development largely depends on the extent and composition of its natural resources. Examples of natural resources include forestry, minerals, and commercial sources of energy (like coal, oil, natural gas, and hydro power). Mining and mineral processing are activities for extraction and processing minerals for commercial use.

The mining sector is likely to contribute to the development of the economy of any country through taxes from large-scale mining companies, and contribute to social–economic infrastructural development within the area where the mine is located. The mining sector can:

- create employment opportunities both directly in the mines and indirectly on services to the mines,
- provide education and health services,
- increase foreign exchange reserves (reducing a country's foreign exchange deficit),
- improve infrastructure like roads and water supply, and
- create other economic activities to support the mines Instead of importing all supplies from abroad.

Mining is a key sector and continues to grow in several part of the world including in the Democratic Republic of Congo. Legislation for mining may require an environmental impact assessment to be carried out before a mine is developed, and that a mine be developed and operated in an environmentally sound manner with the least impact on the environment. This paper gives insights in the environmental audit for mining operations in the DRC.

II. The Mining laws and operations of the Democratic Republic of Congo

The Democratic Republic of the Congo (DRC) holds some of the world's largest deposits of copper and cobalt, as well as significant reserves of gold, diamonds and other minerals (zinc, iron, coltan, tin, uranium, etc).

The DRC has made efforts to promote foreign investment and the creation of a stable fiscal and regulatory climate attractive to the international mining community. The mining industry is regulated through national legislation and regulations issued by the Democratic

Republic of Congo (DRC) parliament and the DRC executive branch and mainly by the Mining Code adopted in 2002 and its ancillary Mining Regulation, adopted in 2003.

As stated previously, mining is a potential source of wealth in the DRC; but in addition to generating wealth, mining can also be a major source of degradation to the physical and social environment unless it is properly managed. More need to be done in order to assist regulators, to encourage sustainable mining while at the same time protecting the environment. [1] It should also be noted that environmental impacts could arise during all phases of the mining process. Therefore, minimising the damage of mining operations depends on sound environmental practices in a framework of balanced environmental legislation.

III. The environmental audit in the eye of the Mining Code of the DRC

The government of the DRC expects to pass a revised mining code before the end of the year in order – among others- to increase tax rates and raise the government's minimum automatic stake in mining projects.

As far as the environmental matter is concerned, we should note that the Mining Code adopted in 2002 – the current law in place - integrated clauses dedicated essentially to environmental measures demanded as preamble to the realization of any mining activity.

The environmental dimension was absent from the Mining Code before the current code of 2002. These measures represent incontestably a significant step forward in the search for sufficient necessary guarantees to transform mining activity into an activity that plays a sensitive role in the sustainable development of the Democratic Republic of Congo.

In effect, under the current mining system, "all mining operation must undertake a study on the project's environmental impact and an environmental management plan previously established and

[1] The concept of sustainability could have a number of definitions. It is taken here to imply that (a) the carrying capacity of the impacted environment is not exceeded (e.g. the capacity of the receiving environment to attenuate contaminants is not breached), (b) the operation does not reduce the capacity of the biosphere's environmental functions to support human economic activities, (c) the area of land functionally required to support a community is not increased and (d) the operation makes efficient use of materials and energy in order to reduce economic costs and environmental impacts - the principle of "more from less".

approved with the dawn of article 401 of the Mining Regulations."

According to this article, these studies must be presented at the same time of request for mining rights. In this way, the current Mining Code holds the title holders responsible for environmental damage which is not beforehand written in their approved environmental plan.

It should be noted that in the subject of the title holder's environmental responsibility relative to mining and quarry rights, the holder is not responsible for damages caused to the environment as a result of his activities unless only in the obvious case where he did not strictly observe the terms of his approved environmental plan including the modifications in the course of the project, or that he violated one of the environmental obligations contained in the current title according to article 405 of the Mining Regulations.

Besides, the code states that in case of transfer of a mining right, the damages responsibility arising from the former works at transfer lean heavily on the former and new holders according to article 280, which deals with the responsibility of soil occupation. This article covers an important aspect in that it brings out the issue of passive environmental heritage and the responsibility of the different actors in the rehabilitation of the ecosystems.

At the conclusion of the audit, the service mandated to carry out environmental audit transmits its environmental opinion to the mining registry within the deadline as provided for each type of mining and/or quarry rights. The audit relevant for the mining or quarry request ends with the notification of the applicants acceptance or with the judge's decision provided for as we will see in article 46 of the current code.

All these procedural decisions of the current Mining Code, shows the willingness of the legislator to effect with promptitude on all operations relating to applications. Transmission of a file to the competent authority by the Mining Registry is done by all means of communication such as by email, telephone, registered post or by messenger services accompanied by an acknowledgement.

The legislator goes further to presuppose that the file should be received at the latest one working day in case of transfer by email or fax and eight working days for the other means of communication.

In case of failure by the Mining Registry, the legislation provides for registration through legal means by article 46 of the current code. In fact, if the Mining Registry does not proceed to register the mining or quarry rights as stipulated by subsection 4 of article 43 of the current code within 5 days, the applicant may lodge a written request to the

competent area court, with copy and contents of the file to the Magistrate nearest in this jurisdiction, obtain a valid mining or quarry title depending on the case.

IV. Conclusion

Despite the economic importance of the mining industry, there are serious environmental effects associated with it. The effects start at the exploration stage, extend through the extraction and processing of minerals, and continue after the mine has closed. The type and extent of the effects can vary from one stage to another.

Drawing on an enhanced knowledge base, and the consequent ability to integrate sound environmental management practices into the planning and design phase, best environmental management practice can be more easily achieved by a new partnership between mining companies or government than by either party alone.

However, "best practice" is not static. The process of continuous improvement will certainly allow individual operations to raise their performance over time; but environmental targets also move as the issues and technologies evolve further.

The plan for the government of the DRC to change its mining code by end of this year 2012 should not underestimate the environmental aspects of the mining operations. It should be taken in consideration the fact that in conducting an audit of an environmental problem, four basic steps are essential including: Identification of the environmental threats of mining in your country; Identification of the government's responses to these threats; Choice of audit topics and priorities and; Deciding on audit approaches (scoping the audit).